

REMARKS / ARGUMENTS

Claims 1, 2, 6, 11-13, 21, and 22 have been amended; therefore, Claims 1, 2, 5-15, and 18-24 are pending. Applicant, furthermore, notes with appreciation the Examiner's indication of allowable subject matter, namely, of Claims 1, 18-20, 23, and 24. Applicant has carefully considered the application in view of the Examiner's action and, in light of the foregoing amendments and the following remarks, respectfully requests reconsideration and full allowance of all pending claims.

Applicant also appreciates the courtesies extended by Examiner Nelson during the aforementioned August 27th telephonic interview dialog. In summary of that telephone interview, Examiner Nelson and Applicant's attorney discussed proposed amendments to Claims 1, 21, and 22 to render those claims consistent with apparatus structure rather than function. The Examiner indicated that the proposed amendments should place the claims in condition for allowance.

Claims 1, 2, 5-14, 21, and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Publication No. 2003/0023505 to Eglen et al. (hereinafter "Eglen"). In response, Applicant has amended Claims 1, 21, and 22 such that they now clearly distinguish and are patentable over the cited reference.

Specifically, and further to the telephone interview summarized above, Claim 1 has been amended to clarify that the initial price indicia is based on said historical demand for content files authored by the respective content creators of each of said first and at least second content files. Claim 21 has been amended to clarify that the initial price indicia formed is adjusted based on the delivery mechanism by which content is delivered to a respective content consumer. Claim 22 has been amended to clarify that the initial price indicia formed is adjusted based on whether a respective content consumer is a commercial content consumer or a non-commercial content consumer. Applicant has reviewed the remaining claims and, accordingly, has amended Claims 2 and 11-13 in a similar manner to Claims 1, 21, and 22, and has amended Claim 6 to correct a minor typographical error. These amendments are supported in the specification as originally

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filed, for example, at page 11, line 24 - page 12, line 4, page 12, lines 15-20, and therefore add no new matter to the application.

In view of the foregoing, and inasmuch as Examiner Nelson has concluded that the prior art does not teach or suggest a specific manner in which price is dynamically adjusted based on historical demand, it is respectfully submitted that both Claims 1 and 15 now clearly and precisely distinguish over *Eglen* in a patentable sense, and are therefore allowable over *Eglen* and the remaining prior art references of record. Accordingly, it is respectfully requested that the rejection of Claims 1, 21, and 22 under 35 U.S.C. § 102(b) as being anticipated by *Eglen* be withdrawn.

Claims 2 and 5-14 depend from and further limit independent Claim 1, in a patentable sense, and, for this reason and the reasons set forth above, are also deemed to be in condition for allowance. Accordingly, it is respectfully requested that the rejections of dependent Claims 2 and 5-14 be withdrawn.

Applicants do not believe any fees are due; however, in the event that any fees are due in connection with the filing of this paper, the Commissioner is hereby authorized to charge any such fees (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper to Deposit Account No. 50-2032 of Scheef & Stone, L.L.P.

Applicant has now made an earnest attempt to place this application in condition for allowance, or in better condition for appeal. Therefore, with appreciative acknowledgement of Examiner Nelson's allowance of Claims 15, 18-20, 23, and 24, Applicants respectfully request, for the reasons set forth herein and for other reasons clearly apparent, full allowance of all of Claims 1, 2, 5-15, and 18-24 so that the application may be passed to issue.

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Should the Examiner have any questions or desire clarification of any sort, or deem that any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,

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